

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

MEGAN WILSON	:	
	:	HEARING NUMBER: 21B-UI-06714
Claimant	:	
	:	
and	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
JACKSON RECOVERY CENTERS INC	:	
	:	
Employer	:	

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A, 96.5-1

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Employment Appeal Board would adopt and incorporate as its own the administrative law judge's Findings of Fact with the following modifications:

The Employer provided the Claimant with its Code of Conduct policies and procedures for which the Claimant signed in acknowledgement of receipt on October 19, 2020. (Employer's Exhibit p. 7-16) The Claimant also received a copy of her job description.

The Claimant's immediate supervisor was Donna Cooper. When the client approached the Claimant explaining her problem, the shift supervisor (Sam Lorna) overheard and said nothing about whether the Claimant should, personally, assist the client.

The Claimant acted outside the duties outlined in her job description.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2019) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(a):

Misconduct is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in the carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993)).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer' version of events.

While the incident that led to the Claimant's separation was a one-time occurrence, it was nonetheless a clear violation of the standards of behavior the Employer had a right to expect of its non-nursing staff given the type of clientele under the Employer's charge. The Claimant's behavior not only violated protocol, it could have caused harm to the client, as well as created serious liability to the Employer. It was incumbent upon the Claimant to adhere to the Code of Conduct for which she had knowledge and understanding based on her signature of the same. The Claimant's argument that the client told the Employer she had no problem with the Claimant's actions is irrelevant because the Claimant's actions were outside the scope of her job responsibilities, and were a clear violation of the personal boundaries expected between her and her teenage clients under such a circumstance. The Claimant admitted she knew she should have contacted someone from the nursing staff, and yet she failed to do so. Her argument that the shift supervisor was aware of her actions is not the equivalent of being given authorization (which would have been ill-advised), nor does it not absolve her of her responsibility to comply with proper protocol. Based on this record, we conclude the Employer satisfied their burden of proof.

DECISION:

The administrative law judge's decision dated May 20, 2021 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct. Accordingly, she is denied benefits until such time she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(2)"a".

James M. Strohmman

Ashley R. Koopmans

Myron R. Linn

AMG/fnv